



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

Mr. Doug Huth
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR96-0252

Dear Mr. Huth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38261.

The Texas Department of Agriculture (the "department") received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a); the requested records may, therefore, be withheld.

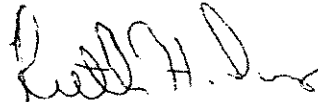
In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.¹ Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a)

¹However, we note that medical records are confidential under section 552.101 of the Government Code in conjunction with the Medical Practice Act, V.T.C.S. article 4495b. Accordingly, even after the litigation has concluded, medical records may be released only in accordance with the provisions of the Medical Practice Act.

ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LBC/ch

Ref: ID# 38261

Enclosures: Submitted documents

cc: A. Gayle Hudgens, Ph.D.
12604 Red Bud Trail
Buda, Texas 78610
(w/o enclosures)